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pay grade to which he or she is assigned, in accordance with 37 U.S.C. 403.

(b) The term “dependent” with respect to a member of the naval service, as used in this part, means:

(1) His or her spouse;

(2) His or her unmarried child (including any of the following categories of children if such child is in fact dependent on the member: A stepchild; an adopted child; or an illegitimate child whose alleged member-parent has been judicially decreed to be the parent of the child or judicially ordered to contribute to the child’s support, or whose parentage has been admitted in writing by the member) who either:

(i) Is under 21 years of age; or

(ii) Is incapable of self-support because of a mental or physical incapacity, and in fact dependent on the member for over one-half of his or her support; and

(3) His or her parent (including a stepparent or parent by adoption, and any person, including a former stepparent, who has stood in loco parentis to the member at any time for a continuous period of at least 5 years before he or she became 21 years of age) who is in fact dependent on the member for over one-half of his or her support; however, the dependency of such a parent is determined on the basis of an affidavit submitted by the parent and any other evidence required under regulations prescribed by the Secretary of the Navy, and he or she is not considered a dependent of the member claiming the dependency unless:

(i) The member has provided over one-half of his or her support for the period prescribed by the Secretary; or

(ii) Due to changed circumstances arising after the member enters on active duty, the parent becomes in fact dependent on the member for over one-half of is or her support.

The relationship between a stepparent and his or her stepchild is terminated by the stepparent’s divorce from the parent by blood.

[44 FR 42190, July 19, 1979, as amended at 65 FR 62617, Oct. 19, 2000]

§ 733.2 Delegations.

The Director, Navy Family Allowance Activity, Anthony J. Celebrezze

Federal Building, Cleveland, OH 44199, with respect to personnel of the Navy, and the Head, Personal Affairs Branch, Manpower Department, Headquarters United States Marine Corps, Washington, DC 20380, with respect to personnel of the Marine Corps, have been granted the authority by the Secretary of the Navy to make determinations including determinations of dependency and relationship when required by legislation or policy for eligibility for BAH, transportation and medical care in behalf of dependents of Navy and Marine personnel and to administer matters involving adequacy of support for dependents and waivers of support of a spouse, and on the basis of new evidence or for other good cause to reconsider or modify any such determination.

[44 FR 42190, July 19, 1979, as amended at 65 FR 62617, Oct. 19, 2000]

§ 733.3 Information and policy on support of dependents.

(a) *Policy*—(1) *General*. The naval service will not be a haven or refuge for personnel who disregard or evade their obligations to their families. All members of the naval service are expected to conduct their personal affairs satisfactorily. This includes the requirement that they provide adequate and continuous support for their lawful dependents and comply with the terms of separation agreements and court orders. Failure to do so which tends to bring discredit on the naval service is a proper subject of command consideration for initiation of court-martial proceedings or other administrative or disciplinary action.

(2) *Adequacy of support*. Every member has an inherent natural and moral obligation to support his or her spouse and family. What is adequate and reasonably sufficient support is a highly complex and individual matter dependent on numerous factors, and may be resolved permanently only in the civil courts. Salient factors that should be considered are the pay of the member, any other private income or resources of the member and the dependents, the cost of necessities and every day living expenses and financial obligations of the dependents, and the expenses and

other financial obligations of the member in relation to his or her income. The Department of the Navy does not and cannot act as a court in these matters. It is desired that the amount of support to be provided for dependents either be established by mutual understanding between the parties concerned or adjudicated in the civil courts. The support scales set forth in paragraphs (b) and (c) of this section are not intended as a fixed rule. They are intended as guidelines and the actual support may be increased or decreased as the facts and circumstances warrant until the amount of support to be furnished is settled by agreement of the parties or adjudicated by the civil courts. Because of the inherent arbitrary and temporary nature of the support scales set forth below, it is not intended that they be used as bases for any judicial proceedings, for to do so would lend excessive credence to administrative tools which have been designed for use only within the Navy and the Marine Corps.

(3) *Support of a lawful wife.* The laws of jurisdictions in the United States impose a legal obligation upon a husband to support his wife. Exemptions from support of a lawful wife may be in the form of an order of a civil court of competent jurisdiction, relinquishment by the wife or mutual agreement of the parties, or a waiver of the naval support requirement granted by the Director, Navy Family Allowance Activity or the Commandant of the Marine Corps, as appropriate.

(4) *Payments of alimony.* Dependents for whom basic allowance for quarters or other allowances are payable are defined by law. For purposes of qualifying for basic allowance for quarters, medical care or other benefits, a former spouse is not a dependent even though alimony has been decreed. Members are expected to comply with the terms of court orders or divorce decrees which adjudge payments of alimony even though basic allowance for quarters is not payable.

(5) *Support of children.* The duty of a member to support his or her minor children is not affected by desertion or other misconduct on the part of the spouse. The obligation to support a child or children is not affected by dis-

solution of the marriage through divorce, unless the judicial decree or order specifically negates the obligations of the member to support a child or children of the marriage. The fact that a divorce decree is silent relative to support of minor children or does not mention a child or children will not be considered as relieving the service member of the inherent obligation to provide support for the child or children of the marriage. In many cases, the courts may not be cognizant of the existence of a child or children, or may not have jurisdiction over the child or children. A commanding officer has discretion to withhold action for alleged failure to support a child under the following conditions:

(i) Where the member cannot ascertain the whereabouts and welfare of the child concerned.

(ii) Where it is apparent that the person requesting support for a child does not have physical custody of the child.

(iii) Where the member has been granted custody of the child by court order but does not have physical control of the child and the member is ready, willing, and able to care for and support the child if physical control is obtained.

(6) *Adopted children.* The natural parents of an adopted child are relieved of the obligation to support the child as such duty is imposed on the adoptive parents. A Navy or Marine Corps member who contemplates the adoption of a child should be aware of the legal obligation to provide continuous support for such child during minority.

(7) *Entitlement to basic allowance for quarters.* Entitlement of members to basic allowance for quarters on behalf of dependents is provided by statute. No member should be denied the right to submit a claim or application for basic allowance for quarters, nor should any command refuse or fail to forward any such claim or application. In cases involving parents, the member should furnish an estimate of the dependency situation to the best of his or her knowledge. Commanding officers should not contact parents for dependency information to include in the member's application. This delays the

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application and serves no useful purpose, as such cases are thoroughly investigated by the Navy Family Allowance Activity or Headquarters Marine Corps, which obtains necessary dependency affidavits directly from the parents. Any person, including a service member or dependent who obtains an allowance by fraudulent means is subject to criminal prosecution.

(8) *Application of the rule based on Robey v. United States* 71 Ct. Cl. 561. Determinations that no dependency exists may be made in disputed cases—if a member does not contribute to the support of spouse and child at least to the extent of:

(i) The full amount of his/her basic allowance for quarters, or

(ii) An amount specified in a court order or legal separation agreement, or

(iii) An amount agreed to by the parties as acceptable, adequate support, whichever is lesser. Pertinent decisions of the Court of Claims or Comptroller General will be followed in determinations of dependency.

(b) *Navy members.* (1) The amount of support to be provided in the absence of a mutual agreement or court order is as follows:

For spouse only— $\frac{1}{3}$ gross pay

For spouse and one minor child— $\frac{1}{2}$ gross pay

For spouse and two or more children— $\frac{3}{4}$ gross pay

For one minor child— $\frac{1}{2}$ gross pay

For two minor children— $\frac{3}{4}$ gross pay

For three or more children— $\frac{1}{2}$ gross pay

(2) For purposes of this support guide, gross pay will include basic pay and BAH, but does not include hazardous duty pay, sea or foreign duty pay, incentive pay, or basic allowance for subsistence.

(c) *Marine Corps members.* (See MCO 5800.16A, Marine Corps Manual for Legal Administration (LEGADMINMAN))

(1) In the absence of a court order or a written agreement between the parties as to an amount of support to be furnished by the Marine, the following shall apply to establish interim support requirements. Note that gross pay is defined as basic pay and BAH, but does not include hazardous duty pay, incentive pay, or basic allowance for subsistence.

(2) *Single family.* (i) For a single family living in Government housing (civilian spouse): interim support shall be \$200.00 per supported person, up to a maximum of $\frac{1}{3}$ gross pay, per month.

(ii) For a single family not living in Government housing (civilian spouse): interim support shall be either \$200.00 per supported family member, or BAH at the “with dependents” rate, whichever is greater, up to a maximum of $\frac{1}{3}$ gross pay, per month.

(3) *Multiple families (not including a spouse in the armed forces).* Interim support for each family member shall be either \$200.00 per supported family member, or the pro rata share of BAH at the “with dependents” rate, whichever is greater, up to a maximum of $\frac{1}{3}$ gross pay, per month.

(4) *Both spouses in the armed forces.* (i) No children of the marriage: no support obligation, regardless of any disparities in pay grade.

(ii) All the children of the marriage in the custody of one spouse: interim support shall be either \$200.00 per supported child, or BAH at the “with dependents” rate, whichever is greater, up to a maximum of $\frac{1}{3}$ gross pay, per month.

(iii) If custody of children of the marriage is divided between the two parents: interim support shall be either \$200.00 per supported family member, or the pro rata share of BAH at the “with dependents” rate, whichever is greater, up to a maximum of $\frac{1}{3}$ gross pay, per month.

(5) Support amounts required pursuant to this section will be paid until a court order or written agreement is obtained.

(6) Form and timing of financial support payments

(i) Unless otherwise required by court order or by written financial support agreement, a financial support payment will be made in one of the following ways:

(A) Check.

(B) Money order.

(C) Electronic transfer.

(D) Voluntary allotment.

(E) Cash.

(F) Involuntary allotment.

(G) Garnishment.

(ii) As an exception to paragraph 15002.6a of the LEGADMINMAN, a commanding officer may direct compliance with the financial support requirements of this section by making in-kind financial support. For example, paying non-Government housing expenses on behalf of family members, automobile loans, or charge accounts.

(7) *Alimony and child support.* (i) Dependents for whom BAH or other allowances are payable are defined by law. For purposes of qualifying for BAH, medical care, or other benefits, a former spouse is not a dependent even though alimony has been decreed. Marines are expected to comply with the terms of court orders which adjudge alimony payments (even though BAH is not payable) until the responsibility for compliance is terminated by a court of competent jurisdiction; a written agreement between the persons concerned; relinquishment by the former spouse in writing; or the waiver of the support requirement is granted by the general court-martial (GCM) authority in writing.

(ii) If the decree is silent as to alimony payments, it is presumed that the court did not intend such payments.

(iii) When a valid court order exists and the Marine concerned is financially unable to comply, the Marine will be advised that noncompliance with the terms of that order renders the Marine liable to further civil court action.

(iv) The duty of Marines to support their minor children is not terminated by desertion or other misconduct on the part of the Marine's spouse. Similarly, the obligation to support a child or children is not eliminated or reduced by the dissolution of the marriage through divorce, unless a judicial decree or order specifically negates the obligation of child support. The fact that a divorce decree is silent relative to support of minor children, or does not mention a child or children, will not be interpreted by command authorities as relieving the Marine of the inherent obligation to provide support for the child or children of the marriage.

(v) A commanding officer may consider releasing a Marine under his/her

command from the specific requirements of this regulation in the situations described below. A commanding officer may reconsider any prior decision made by himself/herself or by a prior commanding officer:

(A) When the Marine cannot determine the whereabouts and welfare of the child concerned;

(B) When it is apparent that the person requesting support for the child does not have physical custody of the child;

(C) When the Marine has been the victim of a substantiated instance of physical abuse (this section applies only to a requirement to support a spouse, not dependent children. Commanding officers are strongly encouraged to consult the installation family counseling center concerning such issues. In addition, commanders should exercise extreme caution in denying dependent support in cases where the servicemember is also a perpetrator of spousal abuse.); or

(D) The dependent is in jail.

(vi) All command directed support waivers shall be in writing and a copy shall be provided to the disenfranchised family member by the command. The command shall also retain a copy. Alleged verbal support waivers shall be given no force or effect.

(vii) The natural parents of an adopted child are relieved of the obligation to support the child as such duty is imposed on the adoptive parent. A Marine who contemplates the adoption of a child should be aware of the legal obligation to provide continuous support, once adopted, for such child during its minority.

[44 FR 42190, July 19, 1979, as amended at 65 FR 62617, Oct. 19, 2000]

§ 733.4 Complaints of nonsupport and insufficient support of dependents.

(a) Upon receipt of a complaint alleging that a member is not adequately supporting his or her lawful dependents (spouse or children), the member will be interviewed and informed of the policy of the Department of the Navy concerning support of dependents. In the absence of a determination by a civil court or a mutual agreement of the parties, the applicable guide in § 733.3